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30 ROCKEFELLER PLAZA
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OFFICE OF PETITIONS

In re Application of :
Breck et al. : DECISION ON PETITION
Application No. 09/800,461 :
Filed: March 7, 2001 :
Atty Docket No. 40655.0700 :

This is a decision on the PETITION UNDER 37 C.F.R. §1.137(a) TO REVIVE UNAVOIDABLY ABANDONED APPLICATION, filed September 7, 2006, in the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely file a proper reply to the non-final Office action mailed November 17, 2005. This Office action set a shortened statutory period for reply of three (3) months, with extensions of time obtainable under § 1.136(a). No proper reply having been received and no extensions of time obtained, the application became abandoned effective February 18, 2006. A Notice of Abandonment was mailed on June 29, 2006. (Applicants timely filed a response to the non-final Office action mailed June 6, 2005. The Notice of Abandonment erred in noting a failure to respond to the June 6, 2005 Office action).

Petitioner maintains that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unavoidable. Petitioner asserts the abandonment was unavoidable because the Office action mailed November 17, 2005, was never received by Applicants' attorneys.

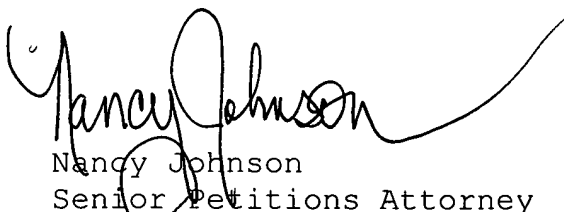
In support thereof, practitioner states that based on a review of the relevant file and docket records the Office action was never received. Petitioner submits a declaration of facts of Mark Chanderdatt, docketing supervisor, and a copy of the docket record where the Office action would have been entered had it been received.

35 U.S.C. 133 provides that the Director may revive an application if the delay in replying to the outstanding Office action is shown to the satisfaction of the Director to have been unavoidable. A grantable petition to revive an unavoidably abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee set forth in 37 CFR 1.17(1); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer (and fee as set forth in \$1.20(d)) required pursuant to \$1.137(d).

The petition includes the required reply in the form of an amendment, payment of the petition fee and a showing of unavoidable delay. No terminal disclaimer is required. The facts and circumstances of the abandonment as set forth on petition have been considered, and it is concluded that petitioner has met his burden of establishing that the entire delay from the due date for the reply until the filing of a grantable petition was unavoidable.

Technology Center AU 3621 has been advised of this decision. The application is, thereby, forwarded to the examiner for consideration of the reply submitted on petition filed September 7, 2006.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3219.


Nancy Johnson
Senior Petitions Attorney
Office of Petitions